

HOUSE BILL No. 1044

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-67; IC 31-14-13; IC 31-17-2.

Synopsis: Joint legal custody. Establishes a rebuttable presumption that an award of joint legal custody is in the best interest of a child. Requires a court, if a party seeks to rebut the presumption, to consider: (1) the fitness and suitability of each of the persons awarded joint legal custody; (2) the ability of the parents to communicate and advance the child's welfare; and (3) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody. Repeals a provision containing language that is relocated within the Indiana Code. Repeals provisions providing that: (1) the mother of a child born out of wedlock has sole legal custody of the child; and (2) a custodial parent may determine the child's upbringing.

Effective: July 1, 2009.

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January 7, 2009, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1044

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-67 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 67. "Joint legal
3 custody", for purposes of **IC 31-14-13**, IC 31-17-2-13, ~~IC 31-17-2-14~~,
4 and IC 31-17-2-15, means that the persons awarded joint custody will
5 share authority and responsibility for the major decisions concerning
6 the child's upbringing, including the child's:

7 (1) education;
8 (2) health care; and
9 (3) religious training.
10 **However, the term does not include an award of physical custody**
11 **of the child.**

12 SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. The court shall
14 determine custody in accordance with the best interests of the child.
15 **Except as provided in section 2.2 of this chapter**, in determining the
16 child's best interests, there is not a presumption favoring either parent.
17 The court shall consider all relevant factors, including the following:



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- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

SECTION 3. IC 31-14-13-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.2. There is a rebuttable presumption that an award of joint legal custody is in the best interest of the child.**

SECTION 4. IC 31-14-13-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.4. If a party seeks to rebut the presumption under section 2.2 of this chapter that an award of joint legal custody is in the best interest of the child, the court shall consider:**

- (1) the fitness and suitability of each of the persons who would be awarded joint legal custody;**
- (2) whether the persons who would be awarded joint legal custody are able to communicate and cooperate in advancing the child's welfare; and**
- (3) whether the child has established a close and beneficial relationship with both of the persons who would be awarded joint legal custody.**

SECTION 5. IC 31-17-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.** The court shall determine custody and enter a custody order in accordance with the best interests of the child. **Except as provided in section 13 of this chapter,** in determining the best interests of the child there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

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- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

SECTION 6. IC 31-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. ~~The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be~~ **There is a rebuttable presumption that an award of joint legal custody is** in the best interest of the child.

SECTION 7. IC 31-17-2-15, AS AMENDED BY P.L.3-2008, SECTION 237, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. ~~In determining whether an award of joint legal custody would be that an award of joint legal custody is~~ **If a party seeks to rebut the presumption** under section 13 of this chapter **is** in the best interest of the child, the court shall consider: it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons **who would be** awarded joint legal custody;
- (2) whether the persons **who would be** awarded joint legal custody are ~~willing and~~ able to communicate and cooperate in advancing the child's welfare; **and**
- ~~(3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;~~
- ~~(4)~~ **(3)** whether the child has established a close and beneficial relationship with both of the persons **who would be** awarded joint

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1 **legal** custody.

2 (5) whether the persons awarded joint custody:

3 (A) live in close proximity to each other; and

4 (B) plan to continue to do so; and

5 (6) the nature of the physical and emotional environment in the
6 home of each of the persons awarded joint custody.

7 SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 JULY 1, 2009]: IC 31-14-13-1; IC 31-14-13-4; IC 31-17-2-14.

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